

REMARKS

This amendment is in response to the Office Action dated October 24, 2006, ("Office Action"). It is respectfully submitted that the application is in condition for allowance. Claims 18-20 were pending and were rejected in the Office Action. Claim 18 has been amended and claims 29-30 have been added by virtue of the present amendment (claims 1-17 and 21-28 having previously been canceled). No new matter has been added. Allowance and reconsideration of the application in view of Applicant's amendment and the ensuing remarks are respectfully requested.

Claim 18 was amended to recite that the method is for a subject in need of treatment to promote the formation, maintenance or repair of tissue and to clarify that the subject that is administered the agent is "in need of treatment to promote the formation, maintenance or repair of tissue." Support for this amendment may be found throughout the specification; for example, page 8, line 27 to page 9, line 3, and pages 28-32.

Claim 29 was added to recite "leptin, leptin homologues, angiogenic peptide fragments of leptin, and idiotypic antibodies that bind to the leptin binding site on the leptin receptor" as agents capable of inducing a leptin or leptin receptor-mediated angiogenic response. Support for this amendment may be found throughout the specification.

Claim 30 was added to further recite that leptin is the agent capable of inducing a leptin or leptin receptor-mediated angiogenic response. Support for this amendment may be found throughout the specification.

In the Office Action, Examiner rejected claims 18-20 under 35 U.S.C. §102(e), as being anticipated by Snodgrass *et al.* (U.S. Pat. No. 6,355,237). Examiner found that Snodgrass *et al.* teach that "leptin can be administered to a patient in various therapeutic doses that would be sufficient to ameliorate or treat various disorders and deficiencies [and therefore] administering leptin would inherently encompass tissue repair and maintenance." Examiner further found that Snodgrass *et al.* teach "administering leptin in therapeutic dosages as per need such as intravenous,

subcutaneous, parenteral [sic] and intramuscular for its desired effect and that the drug delivery can be administered locally.” With respect to claims 18-20, this rejection is respectfully traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. MPEP §2131 (citing Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631 (Fed. Cir. 1987)).

“In general, a limitation or the entire invention is inherent and in the public domain if it is the ‘natural result flowing from’ the explicit disclosure of the prior art.” Perricone v. Medicis, 432 F.3d 1368, 1377 (Fed. Cir. 2005), (citing Schering Corp. v. Geneva Pharms., 339 F.3d 1373, 1379 (Fed. Cir. 2003)). In Perricone, the Court found that the prior art did not “disclose topical application to skin sunburn” and “skin sunburn” is not analogous to skin surfaces generally and thus “the disclosed use of [the prior art compound], *i.e.*, topical application [to skin], does not suggest application of [the prior art compound] to skin sunburn.” Id. at 1378-79.

Furthermore, “a disclosure of a broad genus does not necessarily specifically disclose a species within that genus.” See Id., at 1377, (citing Corning Glass Works v. Sumitomo Elec. U.S.A., Inc., 868 F.2d 1251, 1262 (Fed. Cir. 1989)).

Applicant respectfully submits that Snodgrass *et al.* simply does not teach or suggest that the method is for a subject in need of treatment to promote the formation, maintenance or repair of tissue, and that the subject that is administered the “agent capable of inducing a leptin or leptin receptor-mediated angiogenic response” (the “agent”) is one that is “in need of treatment to promote the formation, maintenance or repair of tissue,” as required by amended claim 18 and claims that depend therefrom. Similar to Perricone, a subject that is in need of treatment to promote the formation, maintenance or repair of tissue is not analogous to the subjects that are treated by Snodgrass *et al.* Further, Snodgrass *et al.* neither directly nor inherently teach that the agent is administered to a subject that is in need of treatment to promote the formation, maintenance or repair of tissue because administering the agent to a subject that is in need of treatment to promote the formation, maintenance or repair of tissue is not a

natural result flowing from the explicit disclosure of Snodgrass *et al.* Each and every element of the claim is not inherently or explicitly described by Snodgrass *et al.* and consequently the claims are not anticipated by Snodgrass *et al.*

Applicant also respectfully notes that Examiner mischaracterized Snodgrass' disclosure regarding the amelioration or treatment of disorders and deficiencies. Snodgrass *et al.* disclosed that various hematological disorders and deficiencies may be treated by leptin rather than "various disorders and deficiencies" as stated by Examiner. Nevertheless, both "disorders and deficiencies" and "hematological disorders and deficiencies" do not encompass the need for "formation, maintenance or repair of tissue." Promoting formation, maintenance or repair of tissue is not the same as treating or ameliorating a disorder or deficiency. This is because administering an agent capable of inducing a leptin or leptin receptor-mediated angiogenic response does not necessarily treat the disorder or deficiency; it promotes the formation, maintenance or repair of the tissue in a subject in need thereof. Even if "disorders and deficiencies" or "hematological disorders and deficiencies" encompass the need for "formation, maintenance or repair of tissue," which Applicant in no way concedes, a broad disclosure of a genus of "various hematologic disorders and deficiencies" or "various disorders and deficiencies" does not disclose species of needs for "formation, maintenance or repair of tissue."

Since Applicant's claims are not directly or inherently taught or suggested by Snodgrass *et al.*, amended claim 18 and dependent claims therefrom are not anticipated by Snodgrass *et al.* In light of the foregoing remarks, Applicant respectfully submits that claims 18-20 are not anticipated by Snodgrass *et al.* Applicant therefore respectfully requests reconsideration and withdrawal of this rejection under 35 U.S.C. §102(e).

All of the claims remaining in the application are now believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

If questions remain regarding this application, the Examiner is invited to contact the undersigned at (213) 633-6800.

Respectfully submitted,

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Attachments: Request For Continued Examination
Petition For A Three-Month Extension of Time

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